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May 7, 2008

VIA HAND DELIVERY

Honorable Richard M. Berman
United States Courthouse
500 Pearl Street, Room 650
New York, New York 10007

MEMO ENDORSED
P2

Re: *Grunstein et al. v. Silva et al.*, Index No. 07 Civ. 3712 (RMB)(RLE)

Dear Judge Berman:

We represented defendants in the above-referenced action, which was dismissed by this Court in an order dated April 11, 2008. We write to request that the Court grant defendants certain costs that were incurred during discovery while the motion to dismiss was pending before the Court.

Courts are empowered both to tax costs when a case is dismissed for lack of subject matter jurisdiction and to tax costs that vary from those described in the Local Civil Rules. 28 U.S.C. § 1920; Local Rule 54.1(c). Defendants incurred both transcription and travel costs at depositions while the motion to dismiss was pending. See Exhibit A (proposed bill of costs). These costs are similar in nature to the costs allowed by the Local Rules, and they should be taxed in this matter. See Local Rule 54.1(c)(1)-(2).

Defendants informed plaintiffs, both at the July 23, 2007, conference and in subsequent correspondence, that defendant Geary Property Holdings, LLC was not diverse from plaintiffs Jack Dwyer and Capital Funding Group, Inc. because one of Geary's members, Beverly Enterprises—Maryland, Inc., conducts all of its business operations in Maryland. Moreover, as noted in the Court's April 11, 2008 order, plaintiffs' own allegations in the Amended Complaint demonstrated the close relationship to the Merger Agreement that made the forum selection clause applicable. Consequently, plaintiffs should have recognized that their action could not proceed here and filed their purported claims in the appropriate forum, Delaware. Plaintiffs should not be able to avoid paying costs that they forced defendants to incur by refusing to proceed in the correct forum.

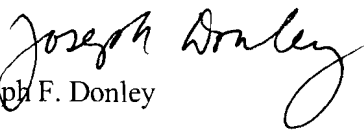
For these reasons, we respectfully request that defendants be granted the costs described in the enclosed proposed bill of costs.

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Honorable Richard M. Berman
May 7, 2008
Page 2

Respectfully submitted,


Joseph F. Donley

Enclosures

cc: H. Joseph Escher, III, Esq.
Martin Stein, Esq. (via electronic mail and U.S. mail)
Ron S. Kaufman, Esq. (via electronic mail and U.S. mail)

<u>PL to respond by 5/15/08</u>	
SO ORDERED: Date: <u>5/8/08</u>	<u>Richard M. Berman</u> Richard M. Berman, U.S.D.J.